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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,925	10/01/2003	Tonia Lee	W2100/280782	9598
23370	7590	02/03/2009	EXAMINER	
JOHN S. PRATT, ESQ			ALAM, SHAHID AL	
KILPATRICK STOCKTON, LLP			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/677,925	LEE ET AL.
	<b>Examiner</b> Shahid Al Alam	<b>Art Unit</b> 2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 17 November 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 2, 5-6, 10, 14, 21-26 is/are pending in the application.  
 4a) Of the above claim(s) 17, 18, 27 and 28 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2,5,6,10,14 and 21-26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 13 October 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Response to Arguments***

1. Applicant's arguments filed November 17, 2008 have been fully considered but they are not persuasive.

Applicant argues that Meyer does not describe determining the location of an area served by the remote device. Meyer does not disclose any direct communication from the intermediate server to the remote devices regarding a unique ID of the intermediate server or displaying the unique ID. Although Meyer may describe that the intermediate server can determine the location of the remote devices, Meyer does not describe that the intermediate server provides an ID that uniquely identifies the intermediate server to an end user or that the end user views the ID and communicates the ID viewed by the user and other information, such as geographic location or demographic information, back to the intermediate server.

Examiner respectfully disagrees all of the allegations as argued. Examiner, in his previous office action, gave detail explanation of claimed limitation and pointed out exact locations in the cited prior art.

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 2111 [R-1]

Interpretation of Claims-Broadest Reasonable Interpretation

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 162 USPQ 541,550-51 (CCPA 1969).

In response to Applicant's argument, Meyer teaches a database for storing configuration information for **remote** configuration of electronic devices. The database includes a plurality of **unique electronic device identifiers**, each of which correspond to at least one electronic device. The database also includes a plurality of sets of current configuration parameters, **each of which are associated with one or more unique electronic identifiers** (para [0046]). The equivalence module is engaged when a first electronic device is modified to provide access to a service provided by service provider. The equivalence module identifies software modules needed to provide equivalent access to the service on one or more **other corresponding electronic devices**. The equivalence module then uses these identifications to modify the device DNA corresponding to the one or more other corresponding electronic devices. As described in more detail below, the next time the one or more other corresponding electronic devices connect to the intermediate server, any software modules, settings, preferences, and/or data defined by the modified device DNA entry are downloaded to the one or more other corresponding electronic devices. The one or more other

corresponding electronic devices may then be capable of providing the same or equivalent access to the service (para[0084]).

Meyer, further, teaches a method of remotely configuring a portable electronic device based on **a geographic location of the device**. The portable electronic device has an associated configuration affecting electronic communications of the device. The steps of the method occur at **a remote system**. At the **remote system**, the method receives the **geographical location** of the portable electronic device. The method then **identifies**, from a database, a set of preferences corresponding to the portable electronic device and to the geographic location of the portable electronic device. Finally, the method **transmits the set of preferences to the portable electronic device**; which modifies the associated configuration of the portable electronic device (para [0044]).

Above teaching of Meyer teaches applicant's claimed invention and claimed arguments.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10, 14 and 24 – 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 and its dependent claims are directed towards a system for determining at least one geographic area served by each of a plurality of receiver units (see instant specification page 4 – 7). However, it is noted that the use of the word "system" does not inherently mean that the claims are directed towards a machine or article of manufacture. The claimed invention is also addressed to a central system for distributing national content and a receiver unit, all of which can be interpreted as comprising entirely of software *per se* according to one of ordinary skill in the art. Therefore, the claim language fails to provide the necessary hardware required for the claim to fall within the statutory category of a machine or article of manufacture.

According to MPEP 2106:

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 2, 5, 6, 10, 14 and 21 – 26 are rejected under 35 U.S.C. 102(e) as being anticipated by US PGPUB Number 2003/0212684 A1 issued to Markus Meyer et al. (hereinafter "Meyer").

With respect to claim 10, Meyer teaches a system for determining at least one geographic area served by each of a plurality of receiver units (Figure 3 and 9), comprising:

a central system for distributing national content to the plurality of receiver units and for instructing the receiver units to generate local content (see Figure 1), wherein the central system instructs the receiver units to generate local content that includes a unique ID associated with the receiver unit providing the local content (Paragraphs 0016 and 0018); and

the plurality of receiver units, each receiver unit serving at least one geographic area wherein each receiver unit generates local content that displays the unique ID associated with the receiver unit to a plurality of end viewers served by the receiver unit (Paragraphs 0023 and 0091);

wherein current system receives from a subset of the end viewers served by the receiver units communication identifying the unique IDs that were communicated by the receiver units and the geographic areas where the unique IDs were displayed and the central system determines at least one geographic areas served by each of the receiver units by associating the unique ID for each receiver unit with the geographic areas identified in the communications from the subset of the end viewers having the same unique ID (Paragraphs 0044 and 0061).

As to claim 14, each receiver unit delivers targeted programming to the end viewers it serves based on the geographic areas served by the receiver unit (Paragraphs 0075 and 0098).

As to claim 24, a central database having an entry for each receiver unit that associates the at least one geographic area served by the receiver unit with the unique ID for the receiver unit (Paragraphs 0044 and 0099).

As to claim 25, each receiver unit stores information on the at least one geographic area served by that receiver unit (Paragraph 0044).

As to claim 26, the information stored in the central database for a selected receiver unit is communicated to the selected receiver unit (Paragraph 0044).

The subject matter of claims 2, 5, 6 and 21 – 23 are rejected in the analysis in the above in claims 10, 14 and 24 – 26 and these claims are rejected on that basis.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shahid Al Alam/  
Primary Examiner, Art Unit 2162

January 31, 2009